competition in general, and the success of expanded interconnection in particular. First, differences in rate structure do not justify a refusal to calculate the amounts recovered for particular functions in DS1 and DS3 tariffs. True, there could be debates about the precise manner in which the total functions contained in a service should be allocated to a rate that has been altered by price cap mechanisms since its original creation via Part 69.

But this is not a situation where the RBOCs have chosen one way of allocating DS1 and DS3, while ALTS is advocating another. Rather, the RBOCs are refusing to perform any allocation of functions to revenues, and thereby frustrating the central goal of the Phase II Designation Order. As shown by these RBOCs' compliance with imputation requirements at both the state and Federal level, there is nothing magical about disaggregating a rate into associated functions, though legitimate debates can exist about various possible approaches. What is egregious here is the RBOCs' refusal to perform any allocation.

Second, and equally important, is the fact that a rate structure can appear to be facially neutral, but have a very different effect when compared to another apparently neutral approach. The structure applied by these RBOCs to create specific charges for virtual interconnection service reflects an approach of trying to treat as many costs as possible as direct. The philosophy behind the original DS1 and DS3 rates, on the other hand, is a rather casual aggregation of a broad spectrum of costs across a wide range of interstate services.

Neither approach is inherently unfair if applied evenly to all services, but the aggressive "service specific" costing approach applied by these RBOCs to their virtual collocation services is manifestly unfair in comparison to similar functions in rates which originated in the Part 69 ratemaking process.

This same problem emerges as to the use of time and materials for maintenance charges involving virtual collocation equipment at the same time that DS1 and DS3 maintenance costs are buried within recurring rates (see BellSouth Direct Case at 3: " ... no rate averaging is employed for collocated equipment on the premise that one interconnector should not be assessed a rate predicated upon the maintenance/repair history of equipment chosen by a second interconnector"). Each approach may be facially neutral, and each may be calculated correctly, but the RBOCs have chosen the high-cost approach to apply to their competitors' service, and the low-cost approach (since capital investment in DS1 and DS3 equipment is usually more maintenance-intense than the LECs' other investments) for their own customers.[15]

This same fundamental point also applies just as strongly to floor space, power, and all the other items which the RBOCs seek to assess interconnector on a unique basis,[16] while refusing to calculate how much their own customers pay for these items.[17] There just isn't anything special about the floors that IDE sits on, and it doesn't use boutique electrons when it consumes power. It may well be appropriate to use a different structure for recovery as to those companies which offer a $1 leaseback, but there is absolutely nothing in this record to show that the

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[15] This absurdity is underscored by Ameritech's defense of time and materials maintenance charges as necessitated by the need to link particular expenses (which Ameritech admits can vary by equipment) to cost causers (Direct Case at 4-5). If this need is so compelling, then Ameritech should also extend it to its DS1 and DS3 customers. The fact it has not chosen to do so is a telling demonstration that Ameritech's real goal is to increase its competitors' costs -- not to create a sound rate structure.

[16] Bell Atlantic's pronouncement that (Direct Case at 4): "Comparable interstate access services, on the other hand, are standardized and provided in a uniform manner" is simply unfounded. DS1 and DS3 facilities are still referred to as "special services" by the LECs, and the industry practice is to accommodate large customers with special needs, anywhere from providing dark fiber facilities to accepting unique equipment requests.

[17] Provisioning and training costs pose potentially different considerations since it is possible that unfamiliar or unique IDEA configurations could cause unusual provisioning and training costs. Since these costs should eventually migrate to the level of provisioning costs for existing DS1 and DS3 services as the RBOCs gain experience with IDEA, ALTS takes no position as to the lawfulness of these particular direct costs <u>at the present time</u>, and individual members reserve their right to object to these amounts.

amounts for these items should be anything different that what the RBOCs' most favored customers pay. See, e.g., US West's Direct Case at 20, n.56 (explaining that US West does not apply separate floor space charges to interconnectors, but rather the same loadings as applied to DS1 and DS3 customers, via the price of the IDEA equipment bay).

Another argument which all the RBOCs try to make is the claim that "price cap" rates contain only "margin," and that any attempt to disaggregate that margin among various functions is impossible. As Ameritech argued this point in its Phase I direct case: "The Commission has a legitimate interest in protecting a CAP from being put in a price squeeze by a LEC in those situations in which the CAP must subscribe to certain LEC services in order to provide an offering that competes with the LEC" (Phase I Direct Case at 5-6). However, Ameritech goes on to assert there, as it does here, that its rates contain only "margin" (id. at 7).

But this is a distinction without a difference. Call it "margin" or call it "allocation of overhead," the price squeeze risk acknowledged by Ameritech obligates the LECs to calculate the implied direct costs for market-driven rates as well as cost-based rates.

Ameritech also makes the argument, as it did in Phase I, that the total margin recovered from comparable services need only equal the total margin on an expanded interconnection service in order to preclude price squeezes (Direct Case at 2). While Ameritech's test might define an absolute minimum price floor in a perfectly competitive world, that is definitely not the world the RBOCs currently operate in. As evidenced by their loud assertions of continued earnings regulation in the wake of the Commission's recent changes in price cap regulation, the RBOC's have ample alternative opportunities to recover implicit "margin" from changes in their refund liability, basket shifts, and many other consequences resulting from their underpricing of competitive offerings.[18]

B. Rate Structures

1. Non-Recurring Costs for IDE

The Phase II Designation Order requires SWB and US West to explain their tariff requirement that IDE equipment costs be recovered through non-recurring charges rather than recurring charges. SWB's defense is simple and to the point (Direct Case at 18): "SWBT has no desire to, nor should be required to, finance its competitors' operations. Recovering these cost [sic] through recurring charges unnecessarily places SWBT and its

[18] See also DOJ's refusal to agree that current price cap regulation is sufficient to preclude LEC incentives to cross-subsidize in recommending a RBOC royalty waiver to Judge Greene.

customers at the financial risk of third parties." US West simply tries to duck the issue of the lawfulness of its earlier tariff entirely (Direct Case at 23): "... US WEST requests that the Bureau not address these matters with respect to US WEST, since the issues are no longer ripe for consideration."

Unfortunately for US WEST, the matter of deliberately publishing anti-competitive tariffs is entirely ripe for the Commission's consideration. And SWB simply ignores sound economic policy when it insists it doesn't have to give a break to its competitors. SWB can choose to be as friendly or as harsh as it wants to be with its interconnector-competitors -- but it cannot lawfully treat its own customers better than interconnectors in terms of charging them differently for the same direct costs without breaking the law.

Indeed, SWB admits it does not have any factual basis for treating interconnector as greater financial risks than DS1 and DS3 customers (Direct Case at 18): "To date, no interconnector has terminated any virtual collocation arrangement with Southwestern Bell." Inasmuch as there have been DS1 and DS3 customers which have defaulted on rate payments, or have unexpectedly discontinued service, it would make far more sense for SWB to assess non-recurring direct equipment costs on its end users, and charge interconnectors on a recurring basis.

The structures of SWB and US West for non-recurring recovery of equipment costs are blatantly anti-competitive in the absence of any evidence or heightened likelihood of risk in comparison with DS1 and DS3 customers. These structures should be emphatically rejected by the Commission.

C. Terms and Conditions in the Virtual Collocation Tariffs

1. SWB's Obligation to Accept IDE

SWB is quite unrepentant concerning its refusal to accept certain IDE if it thinks it has a better choice (Direct Case at 29):

> "SWBT examines each interconnector's request to determine if, from a technical standpoint, its specific pieces of IDE is necessary to in order for the interconnector to obtain the particular functionalities it desires, and whether such IDE is necessary for there to be complete technical (i.e., operational) compatibility between the interconnector's network and SWBT's network. SWBT reserves the right to substitute a different brand or type of IDE that it prefers but that will nonetheless still furnish the interconnector with (a) the particular functionalities it desires, and (b) full operational compatibility with SWBT's network."

SWB misses the point by a wide mark. All LECs have the right to decline any equipment which poses a threat to their networks, but no LEC has the right to refuse IDE because the LEC does not believe it will provide the functionality sought by the interconnector. No doubt some interconnectors will make mistakes in designating certain equipment and be disappointed with the operational results. But that will be their problem, not SWB's.

The Commission should order SWB to refile this condition to make it clear that only a threat to SWB's network is an acceptable basis for declining to accept IDE.

2. Use of Outside Contractors for Installation, Maintenance, and Repair of IDE.

US West contends that while it uses (Direct Case at 33): " ... certified outside contractors for installation of our central office equipment ... [they] are used when US WEST's installation schedules cannot accommodate a particular project's time frames and/or when our work force does not currently have the background for the required installation." US West goes on to say that it (id.): "will make the business and management decision as to when the services of outside contractors are deemed necessary."

The opportunities for abuse created by such a regime are manifest. When outside contractors are expensive relative to internal crews, US West will make the "management decision" to sock it to its interconnector-competitors by retaining outside work. When the roles reverse, inside crews will take on the job of installing the IDEA. The only sure prediction is that US West will guarantee that its potential competitors get the short end of the stick.

The solution is simple. US West is perfectly amenable to the use of outside contractors, it simply prefers to use them either as a schedule balancing measure, or to avoid retraining costs. Interconnectors should have the same "management choice" of inside versus outside work, and the Commission should order US West to revise this tariff condition accordingly.

3. US West's Insurance Requirement

US West continues to argue for its onerous insurance provisions, contending that the "Outside Plant Construction/Maintenance Agreement" contained in its Appendix C is similar to its Standard Agreement for Services used by its procurement subsidiary "with respect to contracting for all types of services" (Direct Case at 41, n.125). But this defense misses the real comparison: interconnection with other carriers. US West should state what insurance requirements it imposes on the other LECs with which it interconnects, whether in manholes or elsewhere. Unless US West can show that it demands the same insurance arrangements from those carriers under the same circumstances, it cannot carry its burden of proof on this issue.

4. Ordering and Billing Virtual Collocation Services

SWB was ordered in the Phase II Designation Order to "explain why it is reasonable to restrict other parties, such as interexchange carriers, from ordering and being billed for virtual collocation services up to the demarcation point with the interconnector" (at ¶ 102). SWB explains that (Direct Case at 37-38) "SWBT's tariff does not prohibit interexchange carriers ('IXCs') or end-users from ordering, and being billed for expanded interconnection ... SWBT has no prohibition against the use of letters of agency regarding its special access and switched transport service nor its virtual collocation expanded interconnection cross-connects in either its tariff or technical publication." Similarly, US West states that (Direct Case at 45): "We in fact would be willing to amend our VEIC tariff to allow customers other than ICs to order and be billed for the VEIC cross connection." ALTS accepts SWB and US West's explanations, provided they are incorporated into their tariff language.

CONCLUSION

For the foregoing reasons, ALTS respectfully requests that the Commission:

- Order the five RBOCs which do not provide physical collocation to immediately refile their virtual collocation tariffs to reflect total direct costs which are no higher than the lowest total for such costs filed by a Tier 1 carrier; and,
- Order that this Phase II rate prescription is without prejudice to these carriers refiling new tariffs reflecting different direct costs, provided such new tariffs are accompanied by all the cost support and sample price-outs required in the Phase II Designation Order.

Respectfully submitted,

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November 9, 1995

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I hereby certify that the foregoing Response to Phase II Cases by the Association for Local Telecommunications Services was served November 9, 1995, on the following persons by first-class mail or hand service, as indicated:

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